



U.S. Department of Justice

*United States Attorney
Southern District of New York*

86 Chambers Street, 3rd floor
New York, New York 10007

March 18, 2021

By ECF and Electronic Mail

Honorable Sarah Netburn
United States Magistrate Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Terrorist Attacks, 03 MDL 1570 (GBD) (SN)*

Dear Judge Netburn:

We respectfully write on behalf of the Federal Bureau of Investigation (“FBI”) to seek an extension of time to produce certain of the records identified in additional searches directed by the Court’s Opinion and Order of February 1, 2021 (ECF No. 6606) (the “Opinion”).

The Opinion required the FBI to search for and produce certain additional non-privileged documents that were the subject of Plaintiffs’ motion to compel within 45 days, or by today. (ECF No. 6606). Since the Court issued the Opinion, the FBI has been diligently conducting the required searches and has been producing non-privileged responsive records on a rolling basis. All non-privileged portions of the records identified in the additional searches directed by the Court’s Opinion have now been produced, with two exceptions.

First, the FBI has determined that certain responsive information was obtained pursuant to grand jury subpoenas issued from the Southern District of California and the Eastern District of Virginia. The FBI is unable to produce those records at the present time, as it is prohibited from doing so under Federal Rule of Criminal Procedure 6(e).

The United States previously filed petitions for disclosure of grand jury information with the district courts in those judicial districts, as required by Federal Rule of Criminal Procedure 6(e)(3)(F), with respect to other grand jury information. Those courts issued orders transferring the petitions to this Court pursuant to Rule 6(e)(3)(G). It is the Government’s understanding that, as a result of those transfer orders, subsequent petitions for disclosure of additional grand jury information in this case can be submitted directly to this Court.

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The Government is therefore submitting to the Court separately and *ex parte* a petition for the disclosure of certain additional grand jury information to counsel for the relevant parties in this case, subject to the provisions of the FBI Protective Order. The petition describes with specificity the grand jury information at issue. Because the petition itself contains grand jury information, the Government respectfully requests that the Court issue an order authorizing the filing of that petition under seal.

The Government notes that, in connection with the prior petitions for disclosure of grand jury information, the PECs filed papers demonstrating particularized need under Rule 6(e)(3)(E)(i). *See Douglas Oil Co. v. Petrol Stops Nw.*, 441 U.S. 211 (1979). In light of the Court's February 1 Opinion and Order, the Government takes no position on whether such a showing should be required in connection with the instant petition.

The FBI respectfully requests an extension of time to produce the grand jury information described in the petition until one business day following the Court's entry of an Order pursuant to Rule 6(e)(3)(E) authorizing the disclosure of such grand jury information subject to the FBI Protective Order, but no earlier than Monday, March 22, 2021.

Second, the FBI has identified one document pertaining to the Court's ruling at pages 52-53 of the Opinion, but has not yet completed review of that document to determine whether it contains unprivileged information that can be released. FBI respectfully requests an additional week, or until March 25, to complete processing of that document and production of unprivileged material if any.

Plaintiffs do not oppose either extension request, but the PECs ask the Court to proceed on the petition urgently in light of upcoming depositions. We thank the Court for its consideration of this request.

Respectfully submitted,

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